



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2018-0133; FRL-9982-76-Region 9]**

#### **Air Plan Revisions; California; Technical Amendments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, certain federal performance requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. The intended effect of this proposal is to delete these rules to make the SIP consistent with the Clean Air Act. The EPA is also proposing to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.

**DATE:** Any comments must arrive by **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2018-0133 at <http://www.regulations.gov>, or via email to Kevin Gong, at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either

manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, (415) 972-3073, [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

## **Table of Contents**

- I. Why is the EPA Proposing to Correct the SIP?
- II. What is the EPA’s Authority to Correct Errors in SIP Rulemakings?
- III. Which Rules are Proposed for Deletion?
- IV. What Other Corrections is the EPA Proposing to Make?
- V. Proposed Action and Request for Public Comment
- VI. Incorporation by Reference

## VII. Statutory and Executive Order Reviews

### I. Why is the EPA Proposing to Correct the SIP?

The Clean Air Act (CAA or “Act”) was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to the EPA for incorporation into the SIP to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, the EPA’s review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review. We now recognize that many of these elements were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

A. Rules that prohibit emissions causing general nuisance or annoyance in the community.<sup>1</sup>

Such rules address local issues but have essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). *See* CAA section 110(a)(1).

B. Local adoption of federal New Source Performance Standards (NSPS) or National

Emission Standards for Hazardous Air Pollutants (NESHAP) requirements either by

---

<sup>1</sup> An example of such a rule is as follows: A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

reference or by adopting text identical or modified from the requirements found in 40 Code of Federal Regulations (CFR) part 60 or 61. Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

- C. Rules that govern local hearing board procedures and other administrative requirements such as fees, frequency of meetings, salaries paid to board members, and procedures for petitioning for a local hearing.
- D. Variance provisions that provide for modification of the requirements of the applicable SIP. State- or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a state or local rule under certain conditions. Pursuant to federal law, specifically section 110(i) of the CAA, 42 U.S.C. 7410(i), neither the EPA nor a state may revise a SIP by issuing an “order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan” without a plan promulgation or revision. The EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent the EPA from enforcing the underlying SIP provisions unless and until the EPA approves that variance as a SIP revision. The variance provisions included in this action are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on federal enforceability unless the variance is submitted to and approved by the EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval to modify the

substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association v. Browner*, No. 97–71117 (9th Cir., May 26, 2000).

- E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

## **II. What is the EPA's Authority to Correct Errors in SIP Rulemakings?**

Section 110(k)(6) of the CAA, as amended in 1990, provides that, whenever the EPA determines that the EPA's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. *See* 57 FR 56762, at 56763 (November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

### III. Which Rules are Proposed for Deletion?

The EPA has determined that the rules listed in Table 1 below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the state and approved by the EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under CAA section 110(k)(6) as inconsistent with the requirements of CAA section 110. A brief discussion of the proposed deletions is provided in the following paragraphs.

<b>Table 1: Local Air District Rules Proposed for Deletion</b>			
<b>Rule or Regulation</b>	<b>Title</b>	<b>Submittal date</b>	<b>EPA Approval</b>
<b>Amador County Air Pollution Control District (APCD)</b>			
Rule 5	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Antelope Valley Air Quality Management District (AQMD)</b>			
Los Angeles County APCD Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Bay Area AQMD</b>			
Division 11	Hydrogen Sulfide	February 21, 1972	37 FR 10842 (May 31, 1972)
Section 11101	[establishes hydrogen sulfide limits]	November 2, 1973	42 FR 23802 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977)
Regulation 8	Emission Standards for Hazardous Pollutants	January 10, 1975	42 FR 23802 (May 11, 1977)
<b>Butte County AQMD</b>			
Section 2-1	[general nuisance	February 21,	37 FR 10842 (May 31, 1972)

	provision]	1972	
Rule 619	Effective Date of Decision	February 10, 1986	52 FR 3226 (February 3, 1987)
<b>Calaveras County APCD</b>			
Rule 205	Nuisance	July 22, 1975	42 FR 23803 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977)
Rule 603	Hearing Board Fees	July 22, 1975	42 FR 23803 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977)
<b>Colusa County APCD</b>			
Rule 4.5	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 4.6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Eastern Kern APCD</b>			
Kern County APCD Rule 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Kern County APCD Rule 420	Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>El Dorado County AQMD</b>			
Rule 52	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 53	Exceptions to Rule 52	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 706	Failure to Comply with Rules	May 23, 1979	46 FR 27115 (May 18, 1981)
<b>Feather River AQMD</b>			
Yuba County Rule 9.7	Permit Actions	March 30, 1981	47 FR 15585 (April 12, 1982)
Yuba County Rule 9.8	Variance Actions	March 30, 1981	47 FR 15585 (April 12, 1982)
<b>Glenn County APCD</b>			
Rule 78	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 79	Exceptions	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Great Basin Unified APCD</b>			
Rule 402	Nuisance	April 21, 1976	42 FR 28883 (June 6, 1977)
Rule 617	Emergency Variances	December 17, 1979	46 FR 8471 (January 27, 1981)

<b>Imperial County APCD</b>			
Rule 117	Nuisances	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 513	Record of Proceedings	November 4, 1977	43 FR 35694 (August 11, 1978)
<b>Lake County AQMD</b>			
Section 1602	Petition Procedures	March 30, 1981	47 FR 15784 (April 13, 1982)
Section 1701.Q	[excess emissions estimate for variance petitions]	February 10, 1986	52 FR 3226 (February 3, 1987)
<b>Lassen County APCD</b>			
Rule 3:2	Permit Fees	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 3:3	Permit Fee Schedules	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 3:4	Analysis Fees	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 3:5	Technical Reports, Charges For	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 4:2	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Mariposa County APCD</b>			
Rule 205	Nuisance	January 10, 1975	42 FR 42219 (August 22, 1977)
<b>Mendocino County APCD</b>			
Rule 4.A	General	February 21, 1972	37 FR 10842 (May 31, 1972)
Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982)
<b>Modoc County APCD</b>			
Rule 3:2	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
Rule 3:6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972)
<b>Mojave Desert AQMD</b>			
Riverside County Rule 51	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
Riverside County APCD Rule 106	Record of Proceedings	February 21, 1972	37 FR 10842 (May 31, 1972)
South Coast	Judicial Review	January 2, 1979	45 FR 30626 (May 9, 1980)



AQMD Rule 1231			
<b>Monterey Bay Air Resources District</b>			
Monterey-Santa Cruz County Unified APCD Rule 402	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
San Benito County APCD Rule 403	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972)
<b>North Coast Unified AQMD</b>			
Del Norte County APCD Regulation IV, introductory paragraph	[untitled but represents a general nuisance type of provision]	February 21, 1972	37 FR 10842 (May 31, 1972)
Del Norte County APCD Rule 340	Technical Report Charges	November 10, 1976	43 FR 25677 (June 14, 1978)
Del Norte County APCD Rule 620	Hearing Procedures	November 10, 1976	43 FR 25677 (June 14, 1978)
Del Norte County APCD Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982)
Del Norte County APCD Rule 630	Decisions	November 10, 1976	43 FR 25677 (June 14, 1978)
Del Norte County APCD Rule 640	Record of Proceedings	November 10, 1976	43 FR 25677 (June 14, 1978)
Del Norte County APCD Rule 650	Appeal of Decision	November 10, 1976	43 FR 25677 (June 14, 1978)
Humboldt County APCD Rule 51	Prohibited Emissions	February 21, 1972	37 FR 10842 (May 31, 1972)
Trinity County APCD Regulation IV, introductory paragraph	[untitled but represents a general nuisance type of provision]	June 30, 1972	37 FR 19812 (September 22, 1972)

Trinity County APCD Rule 56	Failure to Comply with Rules	June 30, 1972	37 FR 19812 (September 22, 1972)
Trinity County APCD Rule 62	Preliminary Matters	June 30, 1972	37 FR 19812 (September 22, 1972)
Trinity County APCD Rule 67	Lack of Permit	June 30, 1972	37 FR 19812 (September 22, 1972)
Trinity County APCD Rule 68	Issuance of Subpoenas, Subpoenas Duces Tecum	June 30, 1972	37 FR 19812 (September 22, 1972)
Trinity County APCD Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982)
<b>Northern Sierra AQMD</b>			
Nevada County APCD Rule 700	Applicable Articles of the Health and Safety Code	June 6, 1977	43 FR 41039 (September 14, 1978)
Nevada County APCD Rule 703 (paragraphs (E) and (I))	Contents of Petitions	June 6, 1977	43 FR 41039 (September 14, 1978)
Nevada County APCD Rule 711	Evidence	April 10, 1975	43 FR 25687 (June 14, 1978)
Plumas County APCD Rule 51	Prohibited Emissions	June 30, 1972	37 FR 19812 (September 22, 1972)
Plumas County APCD Rule 516 (paragraph (C))	Emergency Variance Provisions	June 22, 1981	47 FR 17486 (April 23, 1982)
Plumas County APCD Rule 701	General	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 702	Filing Petitions	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 703	Contents of Petitions	June 22, 1981	47 FR 17486 (April 23, 1982)
Plumas County APCD Rule 704	Petitions for Variances	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 710	Notice of Public Hearing	June 22, 1981	47 FR 17486 (April 23, 1982)
Plumas County APCD Rule 711	Evidence	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 712	Preliminary Matters	January 10, 1975	43 FR 25680 (June 14, 1978)

Plumas County APCD Rule 713	Official Notice	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 714	Continuances	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 715	Decision	January 10, 1975	43 FR 25680 (June 14, 1978)
Plumas County APCD Rule 716	Effective Date of Decision	January 10, 1975	43 FR 25680 (June 14, 1978)
Sierra County APCD Rule 516 (paragraph (C))	Emergency Variance Provisions	June 22, 1981	47 FR 17486 (April 23, 1982)
Sierra County APCD Rule 703	Contents of Petitions	June 22, 1981	47 FR 17486 (April 23, 1982)
Sierra County APCD Rule 710	Notice of Public Hearing	June 22, 1981	47 FR 17486 (April 23, 1982)
<b>Northern Sonoma County APCD</b>			
52	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972)
85	Failure to Comply with Rules	June 30, 1972	37 FR 19812 (September 22, 1972)
91	Preliminary Matters	June 30, 1972	37 FR 19812 (September 22, 1972)
96	Lack of Permit	June 30, 1972	37 FR 19812 (September 22, 1972)
600	Authorization	October 16, 1985	52 FR 12522 (April 17, 1987)
610	Petition Procedure	October 16, 1985	52 FR 12522 (April 17, 1987)
620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982)

### **Amador County APCD**

Amador County APCD Rule 5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 5 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Amador County APCD Rule 6 (Additional Exception) provides an exception to Amador County APCD Rule 5 and should be deleted if Rule 5 is deleted. In this action, we are proposing to delete Amador County APCD Rules 5 and 6 from the Amador County portion of the California SIP.

**Antelope Valley AQMD**

Formed in 1997, the Antelope Valley AQMD administers air quality management programs in the Southeast Desert portion of Los Angeles County that is referred to as “Antelope Valley.” The Antelope Valley AQMD portion of the California SIP includes rules adopted by various air pollution control agencies that had jurisdiction over stationary sources in Antelope Valley since 1972, including the Los Angeles County APCD, the Southern California APCD, the South Coast AQMD, and the Antelope Valley AQMD. Los Angeles County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Although Rule 51 was rescinded in the South Coast AQMD portion of Los Angeles County at 64 FR 71660 (December 22, 1999), the rescission did not apply within the Antelope Valley AQMD portion of the county because, by the time of the 1999 action, the South Coast AQMD no longer had jurisdiction within the Antelope Valley portion of Los Angeles County. In this action, we propose to delete Los Angeles County APCD Rule 51 (Nuisance) from the Antelope Valley AQMD portion of the California SIP.

**Bay Area AQMD**

Bay Area AQMD Division 11 (Hydrogen Sulfide) (including sections 11100, 11101, 11102, 11102.1 – 11102.8) was approved as part of the original SIP for the Bay Area AQMD portion of the California SIP. Section 11101, which is untitled but establishes hydrogen sulfide limits, was superseded by approval of Section 11101 at 42 FR 23802 (May 11, 1977), as corrected and recodified at 42 FR 42219 (August 22, 1977). There has never been a NAAQS for hydrogen sulfide, and thus, Bay Area AQMD Division 11 (including sections 11100, 11101,

11102, 11102.1 – 11102.8) does not relate to the NAAQS and was approved in error.

Bay Area AQMD Regulation 8 (Emission Standards for Hazardous Pollutants), as approved in 1977, includes certain definitions and four substantive rules: Rule 1 (NESHAPS General Provisions), Rule 2 (Emission Standard for Asbestos), Rule 3 (Emission Standard for Beryllium), and Rule 4 (Emission Standard for Beryllium Rocket Motor Firing). Bay Area AQMD Regulation 8 adopts text identical or modified from the requirements found in 40 CFR part 60 or 61, and because the EPA has independent authority to implement 40 CFR parts 60 and 61, it was not appropriate to make parallel local authorities federally enforceable by approving Regulation 8 into the Bay Area AQMD portion of the California SIP. In this action, we are proposing to delete Division 11 (including the amended version of section 11101), and Regulation 8 from the BAAQMD portion of the California SIP.

#### **Butte County AQMD**

Butte County AQMD Section 2-1 is a general-nuisance type of prohibitory rule. As such, Section 2-1 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Butte County AQMD Rule 619 (Effective Date of Decision) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Section 2-1 and Rule 619 from the Butte County AQMD portion of the California SIP.

#### **Calaveras County APCD**

Calaveras County APCD Rule 205 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Calaveras County APCD Rule 603 (Hearing Board Fees) relates to hearing board

procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 205 and 603 from the Calaveras County APCD portion of the California SIP.

#### **Colusa County APCD**

Colusa County APCD Rule 4.5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4.5 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Colusa County APCD Rule 4.6 (Additional Exception) provides an exception to Colusa County APCD Rule 4.5 and should be deleted if Rule 4.5 is deleted. In this action, we are proposing to delete Rules 4.5 and 4.6 from the Colusa County APCD portion of the California SIP.

#### **Eastern Kern APCD**

Kern County APCD Rule 419 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 419 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Kern County APCD Rule 420 (Exception) provides an exception to Kern County APCD Rule 419 and should be deleted if Rule 419 is deleted. In this action, we are proposing to delete Rules 419 and 420 from the Eastern Kern APCD portion of the California SIP.

#### **El Dorado County AQMD**

El Dorado County AQMD Rule 52 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 52 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. El Dorado County AQMD Rule 53 (Exceptions to Rule 52) provides an exception to El Dorado County AQMD Rule 52 and should be deleted if Rule 52 is deleted. El Dorado County AQMD Rule 706 (Failure to Comply with Rules) establishes certain hearing board

procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 52, 53, and 706 from the El Dorado County AQMD portion of the California SIP.

### **Feather River AQMD**

Formed in 1991, the Feather River AQMD administers air quality management programs in Yuba County and Sutter County. The Feather River AQMD portion of the California SIP includes rules adopted by the predecessor agencies, the Yuba County APCD and the Sutter County APCD, to the extent that such rules have not been superseded or removed through EPA approval of rules or rescissions adopted by the Feather River AQMD. Yuba County APCD Rules 9.7 (Permit Actions) and 9.8 (Variance Actions) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 9.7 and 9.8 from the Feather River AQMD portion of the California SIP.

### **Glenn County APCD**

Glenn County APCD Rule 78 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 78 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Glenn County APCD Rule 79 (Exceptions) provides an exception to Glenn County APCD Rule 78 and should be deleted if Rule 78 is deleted. In this action, we are proposing to delete Rules 78 and 79 from the Glenn County APCD portion of the California SIP.

### **Great Basin Unified APCD**

Great Basin Unified APCD Rule 402 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 402 was inappropriate for inclusion in the SIP and, thus, was approved by the

EPA in error. Great Basin Unified APCD Rule 617 (Emergency Variance) allows an owner or operator of stationary sources to file a petition for an emergency variance under certain circumstances and provides for review and action on the petition by the APCO and hearing board. As described above, such provisions are inconsistent with section 110(i) of the CAA and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 402 and 617 from the Great Basin Unified APCD portion of the California SIP.

#### **Imperial County APCD**

Imperial County APCD Rule 117 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 117 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Imperial County APCD Rule 513 (Record of Proceedings) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 117 and 513 from the Imperial County APCD portion of the California SIP.

#### **Lake County AQMD**

Lake County AQMD Section 1602 (Petition Procedures) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. Lake County AQMD Section 1701.Q requires that petitions for variances include an excess emission estimate and supporting documentation. As described above, variance provisions are inconsistent with section 110(i) of the CAA and were thus approved by the EPA in error. In this action, we are proposing to delete Sections 1602 and 1701.Q from the Lake County AQMD portion of the California SIP.

#### **Lassen County APCD**



Lassen County APCD Rules 3:2, 3:3, 3:4, and 3:5 are local fee provisions that were not appropriate for inclusion in the SIP and thus were approved by the EPA in error. On January 18, 2002 (67 FR 2573), the EPA deleted without replacement earlier versions of these same rules that had been submitted as part of the original California SIP on February 21, 1972 and approved on May 31, 1972 (37 FR 10842), but we did not recognize at the time of our 2002 action that the subject rules had been superseded by rules submitted on June 30, 1972 and approved on September 22, 1972 (37 FR 19812). In this action, we propose to delete the later-submitted and approved fee rules for Lassen County. Lassen County APCD Rule 4:2 (Nuisance) is a general- nuisance type of prohibitory rule. As such, Rule 4:2 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 4:2 and the fee rules discussed above from the Lassen County APCD portion of the California SIP.

#### **Mariposa County APCD**

Mariposa County APCD Rule 205 (Nuisance) is a general- nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 205 from the Mariposa County APCD portion of the California SIP.

#### **Mendocino County APCD**

Mendocino County APCD Rule 4.A (General) is a general- nuisance type of prohibitory rule. As such, Rule 4.A was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Mendocino County APCD Rule 620 (Hearing Procedures) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 4.A and 620 from

the Mendocino County APCD portion of the California SIP.

### **Modoc County APCD**

Modoc County APCD Rule 3:2 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 3:2 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Modoc County APCD Rule 3:6 (Additional Exception) provides an exception to Modoc County APCD Rule 3:2 and should be deleted if Rule 3:2 is deleted. In this action, we are proposing to delete Rules 3:2 and 3:6 from the Modoc County APCD portion of the California SIP.

### **Mojave Desert AQMD**

Regulation of stationary air pollution sources in Riverside County is split between the South Coast AQMD (which has jurisdiction over all Riverside County except the Palo Verde Valley) and the Mojave Desert AQMD (which has jurisdiction over the Palo Verde Valley portion of Riverside County). The Palo Verde Valley portion of Riverside County left the South Coast AQMD and joined the Mojave Desert AQMD on July 1, 1994. The applicable SIP for the Riverside County portion of the Mojave Desert AQMD (i.e., the Palo Verde Valley) consists, in part, of rules that were adopted originally by the Riverside County APCD and by the South Coast AQMD and then approved by the EPA prior to July 1, 1994, and that have not yet been superseded or rescinded through EPA approval of SIP revisions adopted by the Mojave Desert AQMD.

Riverside County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Riverside County APCD Rule 106 (Record of Proceedings) is proposed herein for

deletion because it establishes certain hearing board procedures and was thus inappropriate for inclusion in the SIP and approved by the EPA in error. South Coast AQMD Rule 1231 (Judicial Review), also proposed herein for deletion, establishes certain district board procedures, and as such, was inappropriate for inclusion in the SIP and approved by the EPA in error.<sup>2</sup> In this action, we are proposing to delete Riverside County Rules 51 and 106 and South Coast AQMD Rule 1231 from the Riverside County portion of the Mojave Desert AQMD portion of the California SIP.

### **Monterey Bay Air Resources District**

The Monterey Bay Air Resources District (formerly named the Monterey Bay Unified APCD) was formed in 1974 when the Monterey-Santa Cruz County Unified APCD merged with the San Benito County APCD. The rules adopted by the predecessor agencies remain in the SIP to the extent they have not been superseded or rescinded through EPA approvals of rules or rescissions adopted by the unified air district. Monterey-Santa Cruz County Unified APCD Rule 402 (Nuisance) and San Benito County APCD Rule 403 (Nuisance) are general-nuisance type of prohibitory rules. As such, Rules 402 and 403 were inappropriate for inclusion in the SIP and, thus, were approved by the EPA in error. In this action, we are proposing to delete Rules 402 and 403 from the Monterey Bay Air Resources District portion of the California SIP.

### **North Coast Unified AQMD**

Established in 1982, the North Coast Unified AQMD has jurisdiction over Del Norte, Humboldt and Trinity counties, and the North Coast Unified AQMD portion of the applicable

---

<sup>2</sup> The EPA approved the rescission of South Coast AQMD Rule 1231 at 64 FR 71660 (December 22, 1999), but the rescission was not applicable within the Palo Verde Valley portion of Riverside County because the Palo Verde Valley had joined Mojave Desert AQMD several years before the rescission was approved.

California SIP includes rules that were adopted by these counties and approved by the EPA and not superseded or rescinded through subsequent SIP actions. The introductory paragraphs for Del Norte County APCD's Regulation VI (Prohibitions) and Trinity County APCD's Regulation IV (Prohibitions) and Humboldt County APCD Rule 51 (Prohibited Emissions) are general-nuisance type of prohibitory rules. As such, the introductory paragraphs of Regulation IV and Rule 51 were inappropriate for inclusion in the SIP and, thus, were approved by the EPA in error. Del Norte County APCD Rules 620 (Hearing Procedures), 630 (Decisions), 640 (Record of Proceedings) and 650 (Appeal of Decision) and Trinity County APCD Rules 56 (Failure to Comply with Rules), 62 (Preliminary Matters), 67 (Lack of Permit), 68 (Issuance of Subpoenas, Subpoenas Duces Tecum) and 620 (Hearing Procedures) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were approved by the EPA in error. Del Norte County APCD Rule 340 (Technical Report Charges) is a local fee provision that also was not appropriate for inclusion in the SIP and was approved in error. In this action, we are proposing to delete the various rules listed above from the North Coast Unified AQMD portion of the California SIP.

### **Northern Sierra AQMD**

Established in 1986, the Northern Sierra AQMD has jurisdiction over Nevada, Plumas, and Sierra counties, and the Northern Sierra AQMD portion of the applicable California SIP includes rules that were adopted by these counties and approved by the EPA and not superseded or rescinded through subsequent SIP actions. Plumas County APCD Rule 51 (Prohibited Emissions) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Nevada County APCD Rules

700 (Applicable Articles of the Health and Safety Code), 703 (Contents of Petitions) (paragraphs (E) and (I)) and 711 (Evidence); Plumas County APCD Rules 701 (General), 702 (Filing Petitions), 703 (Contents of Petitions), 704 (Petitions for Variances), 710 (Notice of Hearing), 711 (Evidence), 712 (Preliminary Matters), 713 (Official Notice), 714 (Continuances), 715 (Decision) and 716 (Effective Date of Decision); and Sierra County APCD Rules 703 (Contents of Petitions) and 710 (Notice of Public Hearing) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. Plumas County APCD Rule 516 (Upset and Breakdown Conditions) (paragraph C (“Emergency Variance Provisions”)) and Sierra County APCD Rule 516 (Upset and Breakdown Conditions) (paragraph C (“Emergency Variance Provisions”)) allow an owner or operator of stationary sources to file a petition for an emergency variance under certain circumstances and provides for review and action on the petition by the APCO and hearing board. As described above, such provisions are inconsistent with section 110(i) of the CAA and were thus not appropriate for inclusion in the SIP and were approved by the EPA in error. In this action, we are proposing to delete the various rules listed above from the Northern Sierra AQMD portion of the California SIP.

#### **Northern Sonoma County APCD**

Northern Sonoma County APCD Rule 52 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 52 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Northern Sonoma County APCD Rules 85 (Failure to Comply with Rules), 91 (Preliminary Matters), 96 (Lack of Permit), 600 (Authorization), 610 (Petition Procedure) and 620 (Hearing Procedures) establish certain hearing board procedures, and as

such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 52, 85, 91, 96, 600, 610 and 620 from the Northern Sonoma County APCD portion of the California SIP.

#### **IV. What Other Corrections is the EPA Proposing to Make?**

The EPA is also proposing certain error corrections not because the rules were originally approved into the SIP in error but because of other types of errors made in the course of the SIP rulemaking action. Each such proposal is described in the following paragraphs.

##### **Antelope Valley AQMD**

With respect to the Antelope Valley AQMD portion of the California SIP, we are proposing three additional corrections related to the following: Los Angeles County APCD Regulation VI (Orchard or Citrus Grove Heaters), South Coast AQMD Rule 1186 (PM<sub>10</sub> Emissions from Paved and Unpaved Roads, and Livestock Operations), and Antelope Valley AQMD Rules 107 (Certification of Submissions and Emission Statements) and 1151 (Motor Vehicle and Mobile Equipment Coating Operations).

*Rescission of Los Angeles County APCD Regulation VI (Orchard or Citrus Grove Heaters)*: Los Angeles County APCD Regulation VI includes the following rules: Rule 100 (Definitions), Rule 101 (Exceptions), Rule 102 (Permits Required), Rule 103 (Transfer), Rule 105 (Application for Permits), Rule 106 (Action on Applications), Rule 107 (Standards for Granting Permits), Rule 108 (Conditional Approval), Rule 109 (Denial of Applications), Rule 110 (Appeals), Rule 120 (Fees), and Rule 130 (Prohibitions). California submitted Los Angeles County APCD Regulation VI on June 30, 1972, and the EPA approved it on September 22, 1972 (37 FR 19812). Rule 120 was deleted without replacement at 67 FR 2573 (January 18, 2002), but

the other Regulation VI rules remain in the SIP.

Regulation VI was rescinded in the Southeast Desert portion of Los Angeles County at 43 FR 40011 (September 8, 1978), but was reinstated throughout Los Angeles County when the EPA approved a SIP revision extending the jurisdiction of the South Coast AQMD to the Southeast Desert portion of the county and replacing the SIP rules that had been in effect for the Southeast Desert portion of Los Angeles County with those that applied in the South Coast AQMD. *See* 48 FR 52451 (November 18, 1983). At that time, the applicable SIP for the South Coast AQMD included Regulation VI because the EPA inadvertently failed to codify the rescission of the rules in an action affecting the South Coast AQMD portion of Los Angeles County published at 43 FR 25684 (June 14, 1978). In the final action on June 14, 1978, the EPA indicated: “The changes to Regulation VI, Orchard Grove Heaters, contained in the above mentioned submittals and being acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.” 43 FR at 25685. However, the regulatory text deleting Regulation VI without replacement was not included in the final rule, and thus, Regulation VI became part of the legacy SIP inherited by the Antelope Valley AQMD when it was established in 1997 in the Southeast Desert portion of Los Angeles County. In this action, we are proposing to add regulatory text deleting Regulation VI consistent with our action as described in the preamble to the June 14, 1978 final rule and to delete Los Angeles County APCD Regulation VI from the South Coast AQMD portion of the California SIP and to thereby delete Los Angeles County APCD Regulation VI from the Antelope Valley AQMD portion of the California SIP.

*Deletion of South Coast Rule 1186 (PM<sub>10</sub> Emissions from Paved and Unpaved Roads,*

and Livestock Operations) for Implementation in the Antelope Valley AQMD: In a final rule published at 72 FR 64946 (November 19, 2007), the EPA added a paragraph to 40 CFR 52.220(c)(278)(i)(A) deleting South Coast AQMD Rule 1186 without replacement for implementation in the Antelope Valley AQMD. This paragraph was added in error. Originally adopted on February 14, 1997, no version of South Coast AQMD Rule 1186 has been approved by the EPA for implementation in the Antelope Valley. See footnote 4 in the proposed rule (63 FR 42786, August 11, 1998).<sup>3</sup> Thus, we are proposing to delete the erroneous regulatory language that was added by the November 19, 2007 final rule.

Reorganization of the CFR Affecting Antelope Valley AQMD Rules 107 and 1151: In a final rule published at 80 FR 13495 (March 16, 2015), we approved a rule adopted by the Sacramento Metropolitan AQMD but the amendatory instructions revising paragraph 40 CFR 52.220(c)(423) were in error such that rules that had been approved and listed under “(i) Incorporation by reference,” were erroneously moved under the “(ii) Additional materials” portion of paragraph 40 CFR 52.220(c)(423), including Antelope Valley AQMD Rules 107 (Certification of Submissions and Emission Statements) and 1151 (Motor Vehicle and Mobile Equipment Coating Operations), which were approved in 2013. See 78 FR 21545 (April 11, 2013) (approval of Rule 107) and 78 FR 58459 (September 24, 2013) (approval of Rule 1151). We are proposing to revise paragraph 40 CFR 52.220(c)(423) consistent with the rulemakings affecting that paragraph.

---

<sup>3</sup> Footnote 4 states: “As indicated above, the SCAQMD has jurisdiction over the South Coast Air Basin (SCAB) and Coachella Valley PM-10 serious nonattainment areas. This Federal Register action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.” 63 FR 42786, at 42788 (August 11, 1998).



## **Eastern Kern APCD**

*Approval of 15% and Post-1996 Rate-of-Progress (ROP) Elements for the 1-Hour Ozone NAAQS:* On January 8, 1997 (62 FR 1150), the EPA took final action to approve revisions to the California SIP for ozone for six nonattainment areas, including the San Joaquin Valley ozone nonattainment area, which at the time was defined to include all of Kern County (as well as seven other counties in the Central Valley) and thus subject to the jurisdiction of two air districts: the San Joaquin Valley Unified APCD and the Eastern Kern APCD. Among other elements, the EPA approved “the ROP plans (the original 1994 submittal for 15% ROP requirements and the Kern District portion of the San Joaquin Valley, and the 1996 substitute submittal for post-1996 requirements) as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act.” 62 FR at 1172. In the corresponding regulatory language of the January 8, 1997 final rule, the EPA explicitly identified the approved 15% and post-1996 ROP elements from the San Joaquin Valley Unified APCD but failed to do the same for the Eastern Kern APCD. *Compare* 40 CFR 52.220(c)(204)(i)(D)(1) (for the San Joaquin Valley Unified APCD) with 40 CFR 52.220(c)(205)(i)(A)(1) (for the Eastern Kern APCD). 62 FR at 1186. To clarify that, in our 1997 final rule, the EPA approved the 15% and post-1996 ROP demonstrations from the Eastern Kern APCD for the 1-hour ozone standard, we propose to revise 40 CFR 52.220(c)(205)(i)(A)(1) to explicitly add the 15% ROP and post-1996 ROP plans to the existing list of approved elements.

*Incorporation by Reference of Approved Rules 108 and 417:* On April 22, 2004 (69 FR 21713), the EPA took final action to approve certain rules adopted by the Eastern Kern APCD, including Rules 108 (Stack Sampling) and 417 (Agricultural and Prescribed Burning). Due to

erroneous amendatory instructions, the CFR was not updated to reflect this final action. More specifically, the amendatory instructions on page 21715 of the April 22, 2004 final rule should have added paragraph (c)(321)(i)(A) to section 40 CFR 52.220 instead of paragraph (c)(321)(i)(B) because the latter was already in use to identify certain rules adopted by the San Joaquin Valley Unified APCD. We propose to fix this error by correcting the amendatory instructions.

### **El Dorado County AQMD**

*Reorganization of the CFR Affecting El Dorado County AQMD Rule 101:* On October 10, 2001 (66 FR 51578), the EPA approved revisions to the El Dorado County AQMD portion of the California SIP. Among the approved revisions was El Dorado County AQMD Rule 101 (General Provisions and Definitions). The final rule codifies the approval of Rule 101 in paragraph 40 CFR 52.220(c)(280)(i)(B), which lists approved rules adopted by the El Dorado County AQMD, but due to a publishing error, the codification of the approval of Rule 101 is found in paragraph 40 CFR 52.220(c)(280)(i)(C), which lists EPA-approved rules adopted by the Yolo-Solano AQMD. We propose to fix this error accordingly.

*Approval of El Dorado County AQMD Rule 1000.1 (Emission Statement Waiver):* On May 26, 2004 (69 FR 29880), the EPA approved emissions statement rules for seven air districts in California, including Rule 1000 (Emission Statement) submitted for the El Dorado County AQMD portion of the California SIP. All but one of the emissions statement rules that were approved on May 26, 2004 include language providing a waiver to any class or category of stationary sources that emit less than 25 tons per year of volatile organic compounds (VOC) or oxides of nitrogen (NO<sub>x</sub>) if certain conditions are met, which is consistent with CAA section

182(a)(3)(B)(ii). Unlike the rules that provide for the waiver as a paragraph within the emissions statement rule itself, the El Dorado County AQMD provides for the exemption in a separate rule, namely, Rule 1000.1 (Emission Statement Waiver).<sup>4</sup> Although Rule 1000.1 was submitted along with Rule 1000 on November 12, 1992, we only listed the latter rule as approved in our May 26, 2004 final action but should have listed both. We propose to add Rule 1000.1 (Emission Statement Waiver) in paragraph 40 CFR 52.220(c)(190)(i)(C)(1) to clarify that our May 26, 2004 approval included both Rule 1000 and Rule 1000.1.

*Reorganization of the CFR Affecting El Dorado County AQMD Actions Listed in 40 CFR 52.220(c)(27)(viii):* On July 9, 2008 (73 FR 39237), the EPA approved revisions to the Northern Sierra AQMD portion of the California SIP, including rescission of certain rules that had been adopted by the Nevada County APCD. In the July 9, 2008 final rule, we added regulatory language to reflect the rule rescissions in paragraph 40 CFR 52.220(c)(27)(vii), which lists rules and rule rescissions applicable to the Nevada County APCD portion of the California SIP, but due to a publisher's error, the regulatory language is found in paragraph 40 CFR 52.220(c)(27)(viii), which lists rules and rule rescissions applicable to the El Dorado County AQMD portion of the California SIP. We propose to fix this error accordingly.

### **Great Basin Unified APCD**

*Disapproval of Great Basin Unified APCD Rule 401 (Fugitive Dust):* On August 13, 2009 (74 FR 40750), the EPA took final action to disapprove revisions to the Great Basin

---

<sup>4</sup> El Dorado County AQMD Rule 1000.1 provides: "The APCO may waive this requirement to any class or category of stationary sources which emit less than 25 tons per year of oxides of nitrogen or reactive organic gas if the district provides the Air Resources Board with an emission inventory of sources emitting greater than 10 tons per year of nitrogen oxides or reactive organic gas based on the use of emission factors acceptable to the Air Resources Board."

Unified APCD portion of the California SIP. Specifically, the EPA *disapproved* Great Basin Unified APCD Rule 401 (Fugitive Dust); however, we mistakenly added a paragraph incorporating this rule by reference in 40 CFR 52.220 (“Identification of plan) as if we had *approved* the rule as part of the California SIP. To correct this error, we propose to remove the corresponding paragraph (i.e., 40 CFR 52.220(c)(350)(i)(A)(2)) from 40 CFR 52.220.

### **Lake County AQMD**

*Reinstatement of Lake County AQMD Tables I through IV:* On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to certain rules that were adopted by the Lake County AQMD, submitted by California on February 10, 1977, and approved by the EPA on August 4, 1978 (43 FR 34463), we added a paragraph, i.e., (c)(37)(iv)(D), to 40 CFR 52.220 (Identification of plan) that states: “Previously approved on August 4, 1978 and now deleted without replacement Rules ... , and Tables I to V.” 62 FR at 34645. First, Lake County AQMD Table V (Table of Standards, Applicable Statewide) was *disapproved* on August 4, 1978 (43 FR 34463), and because it was disapproved, it was not part of the SIP and need not be deleted. Second, Lake County AQMD Table I (Agencies Designated to Issue Agricultural Burning Permits), Table II (Daily Quota of Agricultural Material that May Be Burned by Watershed), Table III (Guides for Estimating Dry Weights of Several California Fuel Types), and Table IV (Particulate Matter Emissions Standard for Process Units and Process Equipment) are substantive provisions relied upon by certain prohibitory rules and were not approved “in error.” We are proposing to reinstate Lake County AQMD Tables 1 through IV by

revising the regulatory language in 40 CFR 52.220(c)(37)(iv)(D) accordingly.<sup>5</sup>

## **Mojave Desert AQMD**

### *Rescission of Riverside County APCD Regulation V (Orchard or Citrus Grove Heaters):*

Riverside County APCD Regulation V includes the following rules: Rule 75 (Definitions), Rule 76 (Exceptions), Rule 77 (Permits Required), Rule 78 (Application of Permits), Rule 79 (Action on Applications), Rule 80 (Standards for Granting Permits), Rule 81 (General Restrictions and Conditions of Permits), Rule 83 (Denial of Applications), Rule 84 (Appeals), Rule 85 (Classification of Orchard, Field Crop or Citrus Grove Heaters), and Rule 86 (Prohibitions).

California submitted Riverside County APCD Regulation V on February 21, 1972 as part of the original California SIP, and the EPA approved it on May 31, 1972 (37 FR 10842).

Regulation V was rescinded in the Southeast Desert portion of Riverside County at 43 FR 40011 (September 8, 1978), but was reinstated throughout Riverside County when the EPA approved a SIP revision extending the jurisdiction of the South Coast AQMD to the Southeast Desert portion of the county and replacing the SIP rules that had been in effect for the Southeast Desert portion of Riverside County with those that applied in the South Coast AQMD. *See* 47 FR 25013 (June 9, 1982). At that time, the applicable SIP for the South Coast AQMD included Regulation V because the EPA inadvertently failed to codify the rescission of the rules in an action affecting the South Coast AQMD portion of Riverside County published at 43 FR 25684 (June 14, 1978). In the June 14, 1978, final action, the EPA indicated: “The changes to Regulation VI, Orchard Grove Heaters, contained in the above mentioned submittals and being

---

<sup>5</sup> Since 1997, the EPA has approved newer versions of Lake County AQMD Tables I and II, and thus, as a practical matter, reinstatement of Tables 1 through IV, as approved in 1978, would only reinstate Tables III and IV as part of the current applicable SIP for the Lake County AQMD portion of the California SIP.

acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.” 43 FR at 25685. However, the regulatory text deleting Regulation V without replacement was not included in the final rule, and thus, Regulation V became part of the legacy SIP inherited by the Mojave Desert AQMD when the Palo Verde Valley portion of Riverside County joined the Mojave Desert AQMD in 1994. In this action, we are proposing to add regulatory text deleting Regulation V consistent with our action as described in the preamble to the June 14, 1978 final rule and to delete Riverside County APCD Regulation V from the South Coast AQMD portion of the California SIP and to thereby delete Riverside County APCD Regulation V from the Mojave Desert AQMD portion of the California SIP.

### **Monterey Bay Air Resources District**

*Disapproval of Monterey Bay Air Resources District Rule 200 (Permits Required)*: On March 26, 2015 (80 FR 15899), the EPA took final action to approve or disapprove certain revisions to the Monterey Bay Air Resources District portion of the California SIP. One of the actions finalized on March 26, 2015 was the disapproval of an amended version of Rule 200 (Permits Required) that had been submitted on May 8, 2001. Although we *disapproved* Rule 200, we mistakenly added a paragraph incorporating this rule by reference in 40 CFR 52.220 (“Identification of plan) as if we had *approved* the rule as part of the California SIP. *See* 40 CFR 52.220(c)(284)(i)(A)(5). To correct this error, we propose to remove the corresponding paragraph (i.e., (c)(284)(i)(A)(5)) from section 52.220 (Identification of plan).

*Rescission of Monterey Bay Air Resources District Rule 208 (Standards for Granting Permits to Operate)*: In that same March 26, 2015, final rule (80 FR 15899), we approved the

rescission of Monterey Bay District Rule 208 (Standards for Granting Permits to Operate), which had been submitted on February 6, 1985 and approved on July 13, 1987 (52 FR 26148), but we did not add corresponding regulatory language to remove the rule from the SIP. We propose to add a paragraph to 40 CFR 52.220(c)(159)(iii) to indicate that Monterey Bay District Rule 208 has been deleted without replacement.

### **North Coast Unified AQMD**

*Erroneous Amendatory Instruction for Disapproval of Certain Open Burning Rules:* On May 18, 1981 (46 FR 27116), the EPA disapproved certain open burning rules adopted by the Santa Barbara County APCD, but the amendatory instructions erroneously listed the disapproved rules in subparagraph (6) of 40 CFR 52.273(a), which lists disapproved rules adopted by the Humboldt County APCD. The correct listing should have been in subparagraph (19), which lists disapproved rules adopted by the Santa Barbara County APCD. The erroneous amendatory instructions were based on the previous format of 40 CFR 52.273 and failed to account for the complete re-organization of 40 CFR 52.273 that the EPA published that same year at 46 FR 3883 (January 16, 1981). We are proposing to revise paragraph 40 CFR 52.273 to accurately reflect the 1981 disapproval of the Santa Barbara County open burning rules.

### **Northern Sierra AQMD**

*Codification of Approval of Northern Sierra AQMD Rules 212 and 213:* On September 16, 1997 (62 FR 48480), the EPA took direct final action to approve certain revisions to the Northern Sierra AQMD portion of the California SIP. In the direct final rule, we indicated that we were approving Northern Sierra AQMD Rules 212 (Process Weight Table) and 213 (Storage of Gasoline Products) along with many other district rules, *see* 62 FR 48481/column 1 and 62 FR

at 48482/column 2; however, in the regulatory portion of the direct final rule, we failed to include Rules 212 and 213 in the list of approved rules. We are proposing to add Rules 212 and 213 to the list of approved rules in 40 CFR 52.220(c)(246)(i)(A)(1).

*Reinstatement of Nevada County APCD Rule 404 (Excluding Paragraph (D))*: On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to a rule that was adopted by the Nevada County APCD, submitted by California on October 15, 1979, and approved by the EPA on May 18, 1981 (46 FR 27115), we added a paragraph, i.e., (c)(52)(xii)(B), to 40 CFR 52.220 (Identification of plan) that states: “Previously approved on May 18, 1981 and now deleted without replacement Rule 404.” 62 FR at 34646. In our proposed error correction, 61 FR 38664 (July 25, 1996), we indicated that the rule we intended to delete was Rule 404 (“Emergency Variance Procedures”), but the correct title of Rule 404 is “Upset Conditions, Breakdown or Scheduled Maintenance,” and “Emergency Variance Procedures” is the title of paragraph (D) of Rule 404. Thus, we intended to delete only paragraph (D) of Rule 404 but erroneously indicated in the final rule that we were deleting without replacement the entire rule. Accordingly, we propose to amend paragraph (c)(52)(xii)(B) to refer only to paragraph (D) of Rule 404.

## **V. Proposed Action and Request for Public Comment**

The EPA has reviewed the rules listed in Table 1 above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, under section 110(k)(6) of the CAA, the EPA is proposing to delete the rules listed in Table 1 above and any earlier versions of



these rules from the corresponding air pollution control district portions of the California SIP. These rules include general nuisance provisions, federal NSPS or NESHAP requirements, hearing board procedures, variance provisions, and local fee provisions. We are also proposing to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in section IV above. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**.

## **VI. Incorporation by Reference**

In this action, for the most part, the EPA is proposing to delete rules that were previously incorporated by reference from the applicable California SIP. However, we are also proposing to include in a final EPA rule regulatory text that reinstates incorporation by reference of certain rules that were previously incorporated by reference but deleted in error, and regulatory text that includes incorporation by reference of rules not previously incorporated. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to reinstate incorporation by reference Lake County AQMD Table I (Agencies Designated to Issue Agricultural Burning Permits), Table II (Daily Quota of Agricultural Material that May Be Burned by Watershed), Table III (Guides for Estimating Dry Weights of Several California Fuel Types), and Table IV (Particulate Matter Emissions Standard for Process Units and Process Equipment) and Nevada County APCD Rule 404 (Upset Conditions, Breakdown or Scheduled Maintenance) (excluding paragraph (D)) and to incorporate by reference Eastern Kern APCD Rules 108 (Stack Sampling) and 417 (Agricultural and Prescribed Burning), El Dorado County AQMD Rule 1000.1 (Emission Statement Waiver) and Northern Sierra AQMD Rules 212 (Process Weight Table) and 213 (Storage of Gasoline Products), as described in section IV of this preamble. The EPA has made, and will continue to

make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

## **VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely corrects errors in previous rulemakings and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2018.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2018-18408 Filed: 8/24/2018 8:45 am; Publication Date: 8/27/2018]